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Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka from 29 April to 7 May 2016, which she conducted jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Special Rapporteur expresses her appreciation to the Government for its willingness to undergo an independent and objective scrutiny of its human rights situation relating to the independence of judges, prosecutors, lawyers and legal officers.

The report, which presents the Special Rapporteur's observations and recommendations, should be read in conjunction with the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka (A/HRC/34/54/Add.2).

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Report of the Special Rapporteur on the independence of judges and lawyers on her mission to Sri Lanka*

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* Circulated in the language of submission only.

I. Introduction

1. The Special Rapporteur on the independence of judges and lawyers, Mónica Pinto, visited Sri Lanka from 29 April to 7 May 2016, at the invitation of the Government, to assess the situation and remaining challenges concerning the independence of judges, prosecutors and lawyers and the proper administration of justice. The visit was conducted jointly with the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Juan E. Méndez (see A/HRC/34/54/Add.2).

2. In addition to visiting Colombo, the Special Rapporteur travelled to Anuradhapura, Jaffna and Kandy. She met with the Minister for Foreign Affairs, the Minister for Justice, the Minister for Law and Order and the Minister for Prison Reforms, Rehabilitation, Resettlement and Hindu Religious Affairs; the Governors of the Central, North Central and Northern Provinces; and representatives of the Judicial Service Commission, the Human Rights Commission, the Legal Aid Commission, the National Police Commission and the Judges' Institute. She also held meetings with the Chief Justice and judges from all tiers, the Attorney-General and State counsels, representatives of the Sri Lanka Bar Association, lawyers, academics, representatives of civil society and members of the diplomatic community.

3. The Special Rapporteur wishes to reiterate her gratitude to the authorities of Sri Lanka, in particular the Minister for Foreign Affairs, for their invitation, the efforts displayed to facilitate the organization of the meetings and their cooperation during the visit. She also warmly thanks the United Nations Resident Coordinator, the Senior Human Rights Adviser and the United Nations country office in Sri Lanka for their committed support in organizing the visit, as well as all those who took the time to share their expertise and opinions with her.

II. Recent political context

4. The presidential and parliamentary elections of January and August 2015 changed the political scenario in the country and brought an opening in the democratic space. That opening was welcomed by many stakeholders, including in the international community. The new Government presented a 100-day programme of constitutional reform and other measures that sought political transformation, including by engaging with the United Nations and its human rights mechanisms to address accountability for human rights violations. The programme culminated in April 2015 with the adoption of the nineteenth amendment to the Constitution, which decreased executive power.

5. One of the promising reforms brought about by the nineteenth amendment was the re-establishment of the Constitutional Council.[1] The Council is the body in charge of recommending to the President the appointment of the members of a number of independent commissions, including the Human Rights Commission, the Public Service Commission and the National Police Commission, and of approving the appointments by the President of a number of high-ranking officials, such as the Chief Justice and the judges of the Supreme Court, the President and the judges of the Court of Appeal, the members of the Judicial Service Commission, the Attorney-General and the Inspector-General of Police.[2]

6. In October 2015, the Government confirmed its engagement with the Human Rights Council by supporting the adoption of resolution 30/1, in paragraph 6 of which the Council, inter alia, noted the proposal of the Government of Sri Lanka to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law and affirmed that a credible

[1] The Constitutional Council was first established by the seventeenth amendment to the Constitution in 2001 and then abolished by the eighteenth amendment, in 2010.

[2] See chapter VII.A of the Constitution.

justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality. The Council also affirmed, in that regard, the importance of participation in a Sri Lankan judicial mechanism, including the special counsel's office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators.

7. In March 2016, Parliament launched the process to start drafting a new Constitution. A Steering Committee and six subcommittees were created, including the Subcommittee on the Judiciary, which submitted its report to the Steering Committee on 19 November 2016. The report focuses on issues related to the independence of the judiciary, the structure of the courts, the jurisdiction of the courts, including in terms of judicial review, and the establishment of the Constitutional Court and its jurisdiction.[3]

III. Justice system

A. Constitutional provisions

8. The current Constitution of Sri Lanka was adopted by the National State Assembly in 1978 and has been amended 19 times. While its preamble assures the independence of the judiciary, it contains no provision that expressly spells out and guarantees the principle of the separation of powers or the importance of judicial independence in a democratic society abiding by the rule of law.

9. Chapter XV of the Constitution, entitled "The judiciary", establishes, inter alia, the general court structure, the procedures for the appointment and removal of the judges of the Supreme Court and the Court of Appeal, those judges' mandatory age of retirement and their salaries, and the procedures for the appointment, disciplining and removal of the judges of the High Court. Chapter XVI, entitled "The superior courts", sets out the respective composition, jurisdiction and powers of the Supreme Court and the Court of Appeal.

10. Chapter XV.A establishes the Judicial Service Commission, which is responsible for appointing, promoting, transferring and disciplining, including through dismissal, judicial officers (with the exclusion of judges of the superior courts and the High Court); transferring judges of the High Court; setting up rules concerning recruitment and training processes, the appointment, promotion and transfer of judicial officers and the training of judges of the High Court; and authorizing the inspection of any court of first instance. The Commission consists of the Chief Justice and the two most senior judges of the Supreme Court, all of whom are appointed by the President subject to the approval of the Constitutional Council.

11. Chapter VII.A establishes the Constitutional Council, a 10-member body comprising the Prime Minister, the speaker of Parliament, the leader of the opposition in Parliament, one member of Parliament appointed by the President, five persons appointed by the President upon nomination by both the Prime Minister and the leader of the opposition, of whom two must be members of Parliament, and one member of Parliament nominated by agreement of the majority of the members of Parliament who do not belong to the party of the Prime Minister or of the leader of the opposition. The Council recommends the appointment of the members of a number of independent commissions to the President and approves the appointment by the President of a number of high-ranking officials in the judiciary and the executive (see paragraph 5 above).

12. Chapter III, entitled "Fundamental rights", guarantees a limited set of civil and political rights, including the right to equality before the law and equal protection of the law (art. 12) and freedom from arbitrary arrest, detention and punishment and prohibition of retrospective penal legislation (art. 13). Articles 17 and 126 establish a right to seek remedy

[3] The report of the Subcommittee on the Judiciary is available at http://english.constitutionalassembly.lk/interim-report/126-interim-report.

for the infringement of any fundamental rights enshrined in the Constitution by executive or administrative action before the Supreme Court.

B. Legal framework

13. Since Sri Lanka declared independence in 1948, its legal system has developed into a complex system comprising a mixture of Roman-Dutch law, English common law and "personal laws" (Muslim, Kandyan and Thesavalamai) (see HRI/CORE/LKA/2008, para. 74).

14. The lower judiciary and courts are governed by the following main instruments, in addition to the relevant constitutional provisions: (a) the Judicature Act (No. 2 of 1978), as most recently amended by the Judicature (Amendment) Act (No. 10 of 2010); (b) the High Court of the Provinces (Special Provisions) Act (No. 19 of 1990) as most recently amended by the High Court of the Provinces (Special Provisions) (Amendment) Act (No. 54 of 2006); (c) the High Court of the Provinces (Special Provisions) Act (No. 10 of 1996); and (d) the Public and Judicial Officers (Retirement) Ordinance. This legal framework is further complemented by the Penal Code, the Code of Criminal Procedure Act and the Civil Procedure Code.

15. At the international level, Sri Lanka is a party to most international human rights treaties, including the International Covenant on Civil and Political Rights and its First Optional Protocol, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention for the Protection of All Persons from Enforced Disappearance.

C. Court structure

16. The court structure is set out in article 105 (1) of the Constitution and is further detailed in section 3 of the Judicature Act.

1. Superior courts

Supreme Court

17. The Supreme Court is the highest court of the country and the final appellate jurisdiction; it was established and is regulated by the Constitution.[4] The Court also exercises jurisdiction in respect of constitutional matters, the protection of fundamental rights, election petitions and any breach of the privileges of Parliament, and it has a consultative jurisdiction. The Chief Justice with any three judges of the Supreme Court nominated by him or her have the power to adopt rules regulating generally the practice and procedure of the Court; these include rules on the enrolment, suspension and removal of attorneys-at-law and the rules of conduct and etiquette for such attorneys-at-law.

18. The Court is composed of the Chief Justice and between 6 and 10 other judges. All serve terms that last until a set retirement age and are appointed by the President upon authorization of the Constitutional Council, and can only be removed from office by order of the President after a parliamentary impeachment process on the ground of proved misbehaviour or incapacity.

Court of Appeal

19. The Court of Appeal too was established and is regulated by the Constitution.[5] The Court exercises, inter alia, appellate jurisdiction over cases of the High Court and other lower courts and tribunals or institutions. Its powers include that of issuing writs of habeas

[4] See, in particular, articles 105-111.C and 118-136.
[5] See, in particular, articles 105-111.C and 137-147.

corpus and of inspecting and examining, upon application, any record of any court of first instance.

20. The Court consists of the President of the Court and between 6 and 11 other judges. The judges serve terms that last until a fixed retirement age and are appointed by the President upon authorization of the Constitutional Council; they can only be removed from office by order of the President after a parliamentary impeachment process on the ground of proved misbehaviour or incapacity.

2. Courts of first instance

High courts

21. The High Court of Sri Lanka was established and is regulated by the Constitution, together with the Judicature Act.[6] The High Court is composed of no fewer than 10 and no more than 75 judges. The judges are appointed by the President upon recommendation of the Judicial Service Commission and after consultation with the Attorney-General. They are tenured until a set retirement age, unless they are removed from office by the President on the recommendation of the Judicial Service Commission. The High Court has both original and appellate civil and criminal jurisdiction.

22. Article 154P of the Constitution provides for the creation of provincial high courts in each province of the country. The Chief Justice nominates, from among the judges of the High Court of Sri Lanka, such number of judges as may be necessary to staff each such court; the Chief Justice can also transfer judges. Provincial high courts exercise, inter alia, original criminal jurisdiction; appellate and revisionary jurisdiction in respect of convictions, sentences and orders pronounced by magistrates or small claims courts and judgments, decrees and orders delivered by district courts or family courts within the province; and jurisdiction to issue writs of habeas corpus.[7]

23. The Commercial High Court was established in Colombo under the High Court of the Provinces Act (No. 10 of 1996) to hear in first instance certain civil actions involving commercial transactions, as well as matters of company law, intellectual property disputes and admiralty issues. In January 2016, a specialized high court was established in Colombo to expedite action on all cases pending under the Prevention of Terrorism Act. Another specialized high court charged with addressing cases brought forward under the Act operates in Anuradhapura.

District courts

24. District courts are courts of first instance and have original jurisdiction over all civil matters, including revenue, trust, matrimonial, insolvency and testamentary cases, when these are not expressly assigned to another court or authority. They are established in every judicial district and regulated by the Judicature Act. District court judges are appointed by the Judicial Service Commission and their retirement age is set out in the Public and Judicial Officers (Retirement) Ordinance.

Small claims courts

25. Small claims courts are set out in the Judicature Act for each judicial division. They have exclusive original jurisdiction to hear and determine civil actions in which the value of the debt, damage or demand, inter alia, does not exceed a sum specified by an order of the Minister for Justice. Judges are appointed by the Judicial Service Commission and their retirement age is determined in the Public and Judicial Officers (Retirement) Ordinance. It is unclear to the Special Rapporteur if the small claims courts have become operational.

[6] See, in particular, articles 105, 106, 111 and 111 A of the Constitution and chapters II and III of the Judicature Act.

[7] See article 154 P of the Constitution, the High Court of the Provinces (Special Provisions) Act, as amended, and the High Court of the Provinces Act.

Magistrate courts

26. The Judicature Act also establishes magistrate courts for each judicial division. Magistrate courts have original jurisdiction over criminal offences as stipulated in the Code of Criminal Procedure Act and the Penal Code, which also define their powers and duties. Magistrates are appointed by the Judicial Service Commission and their retirement age is determined in the Public and Judicial Officers (Retirement) Ordinance.

Other courts and tribunals

27. There are a number of administrative tribunals, such as agricultural tribunals and labour tribunals, that perform functions of a quasi-judicial nature as defined in the law.

IV. Challenges to a competent, independent and impartial justice system

A. Implementation of human rights treaties

28. Sri Lanka is a party to the great majority of international human rights treaties and has accepted the competence of certain treaty bodies to receive individual complaints. However, these instruments and their related jurisprudence are not enforceable before national courts until their content has been enacted in domestic legislation. This has given rise to a highly problematic situation, as many of the rights guaranteed in the treaties have not yet been enshrined in the Constitution or any other piece of legislation.

29. This extreme form of legal dualism is not sustainable, as it is well accepted in international law that a State party to a treaty may not invoke provisions of its domestic legislation as a justification for its failure to meet its treaty obligations. A legitimate expectation exists among Sri Lankans that, once the Government has ratified a human rights treaty, that treaty becomes applicable in Sri Lanka. The authorities have a duty to ensure that every person under its jurisdiction can enjoy and exercise the rights protected in these instruments and, if need be, seize the courts to enforce them, and that judicial decisions on such matters are respected and immediately implemented.

30. In this context, the Special Rapporteur wishes to stress that the decisions adopted by the United Nations treaty bodies, whose jurisdiction Sri Lanka has voluntarily accepted, should be enforced at the national level.

B. Strengthening the independence of the judiciary

31. The Constitution does not contain any provisions expressly recognizing the principle of the separation of powers and the importance of guaranteeing judicial independence. The judiciary has a crucial role to play in a democratic society based on the rule of law and fundamental human rights, including a role in upholding a system of checks and balances.

32. Many credible concerns relating to the independence, impartiality and competence of the judiciary were reported to the Special Rapporteur during her visit. There were periods during which the executive regularly exerted strong pressure on judges in order to influence their decision-making or block their actions. For instance, immediately prior to and during the impeachment process of then Chief Justice Shirani Bandaranayake, attacks against judges, but also lawyers, dramatically increased and turned violent. That pressure seems to have largely eased under the new government and no recent direct attack has been reported to the Special Rapporteur.

33. Judges are reportedly often offered government or other political offices after retirement. This practice raises concerns regarding possible conflicts of interest and casts doubt on the independence and impartiality of judges who may be hoping to obtain such positions.

34. Overall, judicial independence seems to have been gradually eroded over several decades owing to the conflict and its aftermath, despite certain positive reforms and advancements. There was nevertheless a clear perception during the visit that, after the change of government in 2015, some judges had started affirming their independence. This can partly be explained by the fact that judges apparently feel more secure in their authority and more confident in the belief that they will be adequately protected should they face undue pressure. However, a number of concerns relating to the lack of sufficient structural safeguards for the independence of the judiciary and the courts remain.

Selection and appointment

35. During her visit, the Special Rapporteur spoke with many individuals who expressed concern about the selection and appointment of judges, in particular the lack of transparency of the procedures and the important role played by the President, which opens the door to political manipulation and interference. The Special Rapporteur notes with concern that, while the role of the Constitutional Council was meant to mitigate the President's influence, the majority of the Council's members are politicians.

36. It is unclear how the competence of candidates is evaluated and what criteria are applied in the process of selecting superior court judges. In particular, it is very problematic that the Constitutional Council has yet to write down the procedures for the different appointments in which it has a role to play, whether in terms of recommending candidates for appointment or approving selected candidates.

37. The Judicial Service Commission has set out the rules for recruiting judges to the lower judiciary. According to those rules, in order to enter the judiciary, candidates must have been practising law for a minimum of three years, pass a written examination and then be successful in an interview. Once appointed, they have to undergo mandatory training at the Judges' Institute. A credible source told the Special Rapporteur that in the past there had nevertheless been instances of appointments that did not follow the established procedure.

38. A strict and rigorous recruitment process based on objective criteria is essential to ensure the highest competence of the judiciary, to avoid arbitrariness and political manipulation and to improve transparency and legitimacy, thereby building the public's confidence in the independence and impartiality of the justice system.

39. The Judicial Service Commission, which is composed of only three members, all from the Supreme Court, exercises a great deal of power and has many responsibilities. Its independence, technical capabilities and legitimacy could be enhanced by enlarging its composition to include judges of other courts and tiers and other eminent experts, such as retired judges, lawyers or academics.

Promotions

40. There seems to be neither a proper system to evaluate the performance of judges of first instance courts, nor established criteria to support promotions, which gives too much discretion to the Judicial Service Commission and can result in arbitrary decisions. Under such circumstances, promotions can also serve as undue means of influencing the work of judges and, ultimately, their independence.

Transfers

41. According to the information provided during the visit, first instance court judges are required to transfer to a different jurisdiction every four years, sometimes earlier. While transfers after a certain number of years can contribute to judicial independence, they may also be — and have been — used as retaliation. Transparency will improve if the Judicial Service Commission sets up and makes public clear guidelines.

42. Transfers also have negative consequences on the management of cases and the timely delivery of justice. In the opinion of the Special Rapporteur, measures should be taken urgently to limit or at least mitigate such negative consequences. The interests of justice should prevail over a blind application of administrative provisions. Furthermore,

support should be provided to facilitate family relocation in order to avoid negative repercussions on the lives of judges.

Conditions of work

43. Judges' salaries are relatively low and reportedly fail to attract the most qualified people. Moreover, the salary scale applied in the lower judiciary is the same as that applied to other public officers. It is essential that the remuneration of judges be adequate to lead a life that reflects the importance and dignity of their function. Judges' salaries should also be considered in their own context and not be assimilated to the salaries of other public servants whose functions are different and who can also hold other types of employment.

44. More resources are needed to allow judges to work in the best conditions. Adequate facilities, in particular workspaces and libraries, were mentioned as a priority by several judges.

Training

45. The Judges' Institute is in charge of the initial mandatory training of first instance court judges and offers a variety of on-the-job training programmes, including courses taught through video link. Some judges have the opportunity to travel abroad to pursue further studies or specialized training. These opportunities should be provided on the grounds of objective criteria, including to junior judges, ensuring a consistent and transparent selection of candidates for specific training sessions.

46. The Judges' Institute should offer more and new training opportunities, including on international human rights law, gender perspectives and women's rights, international humanitarian law, international criminal law, emerging legal issues, new technological developments and technical matters such as the analysis of complex forensic evidence. More resources should be allocated to the Institute so as to establish a larger and improved library and better facilities. The Institute's governing authorities should also be advised by a board composed of retired judges, academics and representatives from the Bar Association of Sri Lanka.

C. Judicial accountability

47. Judicial accountability goes hand in hand with judicial independence. Both are essential in a democratic society. While judges must enjoy certain privileges and immunities because of their function, they must also be accountable for their conduct if a system of checks and balances is to be maintained.

48. The judges of the superior courts can be removed from office by a decision of the President after an impeachment procedure before Parliament. The procedure, which is foreseen in the Constitution, is not regulated in any ordinary law and is implemented by Parliament through a standing order. The impeachment procedure is extremely politicized and characterized by a lack of transparency, by a lack of clarity in the proceedings and by a lack of respect for fundamental guarantees of due process and a fair trial, all of which undermine its legitimacy. Such politicization was exemplified by the impeachment of the Chief Justice in 2013.[6] The Special Rapporteur also notes with concern that the following Chief Justice was removed from office by executive order after the change of government in 2015. This sets a dangerous precedent of executive interference in the independence of the judiciary.

49. First instance court judges are subject to the disciplinary control of the Judicial Service Commission; in the case of High Court judges, the Commission makes recommendations to the President. The procedures in place do not seem to provide

[6] See http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12969&LangID=E and http://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12799&LangID=E.

sufficient guarantees against arbitrary disciplinary measures, which, during certain periods, have reportedly been used to exercise undue control and to retaliate against judges refusing to align themselves with the government.

50. The lack of a proper code of conduct is also worrying. Detailed guidance needs to be provided to judges on the infractions that will give rise to disciplinary procedures. Judges should be suspended or removed only for reasons of incapacity or for behaviour that renders them unfit to discharge their duties. Having such a code would not only facilitate disciplinary proceedings, but also contribute to increasing confidence in the judiciary.

51. All disciplinary procedures must respect fundamental human rights principles, including the principle of due process and the right to appeal a decision, and should be conducted in accordance with a law passed by Parliament, which should set up a special panel composed of independent and impartial individuals and should enumerate the specific causes triggering misconduct and the corresponding sanctions, which must be proportionate and adequate.

D. Attorney-General's department, investigations and prosecutions

52. The Attorney-General acts both as the chief legal adviser of the Government and the head public prosecutor; he or she is appointed by the President upon approval by the Constitutional Council.[9] As the Council has not yet published its rules of procedure and evaluation criteria, the selection and appointment procedure lacks transparency. The appointment of State counsels, as well as their promotion and transfer, is the responsibility of the Public Service Commission, which consists of nine members appointed by the President on the recommendation of the Constitutional Council. Candidates must be attorneys-at-law and are selected after two rounds of interviews before two different boards.

53. The Attorney-General's department does not have investigative powers. All criminal investigations are conducted by members of the law enforcement forces, including police officers, who are also tasked with prosecuting individuals accused of crimes. These members of the law enforcement forces then report on progress made to the relevant magistrate court. State counsels are in charge of prosecutions for crimes to be tried before a high court. Proceedings before high courts can be initiated only by the Attorney-General's department.

54. Many concerns relating to the work of the department and of the police forces were brought to the attention of the Special Rapporteur. The low quality, lack of seriousness and slow pace of many investigations were seen as being very problematic and as leading to serious violations of due process principles. Police officers are not adequately trained to carry out their delicate functions, and many lack even basic technical knowledge. Too many investigations still rely exclusively on confessions, including confessions extracted under torture or ill-treatment.

55. It often takes many years for the Attorney-General's department to issue indictments after it has received the investigation material, even in non-conflict-related and non-political cases. For instance, it took seven years for the department to file an indictment in a child abuse case. Such delays have far-reaching consequences for both victims and defendants, especially when the latter are held in pretrial detention, and are simply unacceptable.

56. According to credible sources, certain cases, in particular those implicating security forces, especially members of the military, and cases related to gross human rights violations and corruption become stalled or are simply not investigated. The Attorney-General's department was also described as "rather lethargic" with regard to such sensitive cases. Moreover, in some cases, in particular those involving traumatic experiences for women or children such as rape and sexual violence, State counsels have displayed a shocking lack of sensitivity. They are in dire need of training, including specialized training

[9] See article 41.C of the Constitution.

in human rights. There is also no specific code of conduct for State counsels, who are bound by the same code of conduct as lawyers.

57. There is one State counsel in each provincial high court, but all procedures are centralized through the Attorney-General's department in Colombo, including those on deciding whether to indict or not. Efforts are reportedly under way to decentralize the work of the department, including by instating a new system of provincial supervision to ensure that prosecutorial matters are conducted properly without having to consult Colombo every time. Besides, the number of staff working in the Attorney-General's department is too low and contributes to the backlog of cases and delays in issuing indictments.

58. The Attorney-General's department acts as the representative of the State, which should by no means be equivalent to defending the government. However, there is a general perception that, first and foremost, the department defends the interests of the government, not the public's interest. This undermines the independence and credibility of the prosecution.

E. A justice system that reflects the diversity of society

59. Sri Lankan society is predominantly Sinhalese, with significant Tamil and Muslim minorities; in the Northern and Eastern Provinces, Tamils are in a majority position. Both Sinhala and Tamil are official languages. Yet, the diversity of the population is not reflected in the justice system: the overwhelming majority of staff of the judiciary, the Attorney General's department and the police forces are Sinhalese. This dominance reaches 100 per cent in many places throughout the country.

60. This situation raises the issue of language, as there are very few Tamil-speaking judges, State counsels and police officers. The majority of judicial proceedings are conducted in Sinhala, even in the Northern and Eastern Provinces. While court interpretation is sometimes available, its quality is said to be poor. A similar serious concern relates to the fact that police officers are rarely in a position to record complaints, collect evidence and carry out interrogations in Tamil, even in provinces with a Tamil majority, and have to resort to very poor transcriptions and translations into Sinhala. Sometimes, interpretation and translation services are not available, so statements in Tamil are simply not recorded. This puts into question the accuracy of the records and the quality and, most importantly, the legality of the investigations. The lack of interpretation and translation services also means that, very often, the accused do not understand their rights. In some cases, judgments are issued in Sinhala without being translated into Tamil and, as a result, lawyers and their clients do not understand the decision. These language problems ultimately have a dramatic impact on access to justice and respect for fair trial and due process guarantees for Tamil-speaking people, and need to be addressed urgently.

61. The representation of women in the legal professions should also be improved. Although close to one third of judges in the country are women, their number decreases the higher up in the hierarchy one looks.

62. Sri Lanka is a pluralistic society. Its justice system should be composed of people from all sectors and should be perceived as being fair and legitimate by all Sri Lankans. This will also ensure a more balanced and impartial perspective on the matters before the courts, eliminating barriers that have prevented some judges from addressing certain issues fairly.

F. Independence of lawyers

63. According to the Constitution and the Judicature Act, the Supreme Court is responsible for and makes rules on the admission, enrolment and discipline, including the suspension and removal, of attorneys-at-law.[10] However, neither the Constitution nor the

[10] See article 136 (1) (g) of the Constitution and articles 40-44 of the Judicature Act.

Judicature Act mention the independence of lawyers. Furthermore, it is not possible to seek remedy or appeal against decisions made by the Supreme Court, including disciplinary measures. Membership in the Bar Association of Sri Lanka, a non-statutory body, is optional.

64. The Bar Association has been, during certain periods, strongly divided along political lines. The politicization of the Association is a source of great concern. The fundamental role of such associations is to promote and protect the independence and the integrity of the legal profession and to safeguard the professional interests of lawyers.

65. The general environment in which lawyers work, including their sense of security, was said to have greatly improved with the change of government in 2015. Before that, lawyers defending former members of the Liberation Tigers of Tamil Eelam and persons accused of terrorism-related offences were regularly branded as traitors and their lives threatened. Any threats against the security of lawyers should be immediately and thoroughly investigated, and appropriate action taken. It was reported that the Criminal Investigation Division of the police had kept files on lawyers defending such "sensitive" cases. The Special Rapporteur calls on the authorities to immediately and seriously investigate such allegations and to take appropriate measures to guarantee the security and independence of lawyers in the future.

G. Right to a fair trial, due process of law and judicial delays

66. The Special Rapporteur expresses great concern about the serious issues affecting fair trial and due process guarantees — ranging from security legislation unduly restricting rights to dramatic judicial delays — reported during her visit.

Access to a lawyer

67. Having prompt access to a lawyer is a precondition for the effective realization of the right to a fair trial and for securing other rights. It represents an important safeguard against arbitrary arrest or detention, unlawful deprivation of liberty and torture and other cruel, inhuman or degrading treatment or punishment.

68. Usually, people who have been arrested are given access to a lawyer only from the moment they are presented to a magistrate, normally within 24 hours of their arrest. In 2012, following an application on the violation of fundamental rights settled by the Supreme Court, the Inspector General of Police issued rules under the Police Ordinance acknowledging the right of a lawyer to represent his or her client at a police station and requiring police officers to facilitate such representation.[11] In August 2016, a draft bill amending the Code of Criminal Procedure Act was presented; the amendment aimed to allow access to a lawyer only after the first statement of the person arrested had been recorded by the police. Fortunately, following complaints from the Bar Association, the Human Rights Commission and civil society, the amendment was withdrawn, thus avoiding a serious regression on the fundamental right to a fair trial.

69. Moreover, while lawyers reported that they had no problem gaining access to clients held in ordinary police stations or detention centres, they said they needed authorization, which could take months to obtain, to visit clients held at the Terrorism Investigation Division in Colombo and in certain detention centres, such as the one in Boosa, where people accused of terrorism-related crimes were often detained. Such restrictions are unacceptable. Suspects and detainees should have unhindered and regular access to their lawyers, regardless of the place of detention and the charges for which they are held.

Prevention of Terrorism Act

70. At the time of writing, the Prevention of Terrorism Act had not yet been repealed, despite repeated calls for the authorities to do so immediately, including from the Special

[11] See the Police (*Appearances of Attorneys-at-Law at Police Stations*) Rules, 2012.

Rapporteur and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment at the end of their visit. The Act, adopted in 1979, imposes severe restrictions on courts' jurisdiction and authority to prevent abusive detention and torture and seriously undermines the fundamental right of defendants to a fair trial. The continuation of a normative framework that contributes to violations of fundamental human rights cannot be justified.

71. If any specific legislation is to be adopted to replace the Act — and the Special Rapporteur is not convinced of that necessity — it must be in line with international human rights law and standards, in particular safeguards against arbitrary arrest and detention, unfair trials and torture.[12]

Judicial delays

72. The Special Rapporteur was, on many occasions, told of judicial delays that were nothing short of dramatic. Criminal proceedings could drag on for 10 to 15 years, even in cases that were not politically sensitive. For instance, a lawyer mentioned being involved in a trial for rape that had recently been completed after 15 years. There were also examples of civil cases that had been pending for more than 30 years. Divorce matters could take eight or more years to be resolved. Such delays clearly amount to a denial of justice, which especially affects the lives of victims, their families and persons deprived of their liberty.

73. Cases were regularly postponed, including owing to the transfer of judges, and judges were not held accountable for the delays they incurred. Besides, it would seem that there was an insufficient number of judges in the country to allow them to tend adequately to their workload.[13] The Attorney-General's department also largely contributed to judicial delays.

74. Such a severe situation can only be addressed with the adoption of a comprehensive set of measures, designed and implemented in consultation with all stakeholders, in particular with judges, staff of the Attorney-General's department and lawyers. The Judicial Service Commission reportedly issued new circulars, to be enforced on 1 November 2016, on expediting old cases. In that context, the Special Rapporteur notes the concerns expressed by the Bar Association about the practicability of implementing those circulars in a letter addressed to the Commission on 24 October 2016.[14]

75. Establishing family courts throughout the country could contribute to reducing the workload of district courts. Increasing the use of mediation, including by making it mandatory in certain types of cases, could also decrease the number of cases reaching the courts. Such steps should be accompanied by measures to improve the quality of mediation, in particular the legal training and integrity of board members.

Plea bargaining

76. The Special Rapporteur was told that judges frequently pushed defendants to plead guilty. Defendants were made to believe they could get a lighter sentence by pleading guilty, which was not always the case, and that their sentence would be shorter than the time they would spend in pretrial detention. When defendants plead guilty, judges can expedite their case and improve their statistics. The Special Rapporteur is alarmed by this practice, which seems to demonstrate a disregard for the interests of justice.

Impartiality in sentencing

77. Concerns regarding the lack of guidelines on sentencing were reported to the Special Rapporteur. Judges should decide their cases on the grounds of the facts and of the evidence produced and in the light of the law in force at the time of the facts.

[12] See, in particular, the recommendations contained in the reports of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (for example, A/HRC/16/51 and A/HRC/22/52 and Corr.1).

[13] There are 335 judges for a population of over 22 million people.

[14] Available at www.basl.lk.

Publicity

78. Only the superior courts publish their judgments on their respective websites. The publication of all court judgments and decisions should be mandatory and automatically done, as a means to reinforce the credibility of the judiciary and build public trust.

Contempt of court

79. Contempt of court, a measure enshrined in the Constitution, was said to have often been abused in the past to impose sanctions *inaudita altera parte*, rather than for its intended purpose, which is to preserve the authority and dignity of judges and courts and prevent the undermining of public confidence in the administration of justice. Contempt of court should be used restrictively and not as a tool to hinder legitimate criticism of judicial organs in a democratic context.

H. Access to justice, protection of victims and witnesses and impunity

80. Access to justice constitutes the means for realizing and restoring rights and is also a fundamental human right in itself. Providing access to justice for all is explicitly included in Sustainable Development Goal 16. To realize that right, the barriers currently faced by many Sri Lankans in reaching the courts, including the limited number of judges, judicial delays and issues related to language, should be urgently recognized and measures should be taken to remove them.

Legal Aid Commission

81. In a country lacking public defence services, the Legal Aid Commission is at the forefront of efforts to provide access to justice for all in Sri Lanka. The Commission is a governmental institution with more than 400 legal officers on staff that was established in 1978 to provide legal advice to and represent people, in both criminal and civil matters, without sufficient financial means.[15] There are 76 legal aid centres throughout the country. The majority of the cases the Commission deals with are related to divorce and labour matters. There is also a special unit that represents victims in cases of human rights violations. The Commission is also involved in outreach activities to inform people about their rights.

Fundamental rights jurisdiction

82. The Supreme Court has the authority to receive applications from persons seeking remedy for the infringement by executive or administrative action of any of the fundamental rights enshrined in the Constitution.[16] If it finds that a violation has occurred, the Court can order compensation and make recommendations, but its decisions cannot be appealed. While this is an important avenue for lodging complaints for violations of fundamental rights, it fails to reach the most vulnerable. Indeed, many victims cannot afford to travel to Colombo and hire a local lawyer to file the application, while some others fear reprisals if they were to do so. There are also language barriers and a time limit of one month, which can prove insurmountable. Some police officers have allegedly offered money to victims or their families agreeing not to file a complaint. Moreover, according to the Chief Justice, there is a backlog of approximately 3,000 applications.

Human Rights Commission

83. In 2015, new and highly credible and competent commissioners were appointed to head the Human Rights Commission. The Commission can receive and investigate complaints of human rights violations and make recommendations thereon. While it is an important mechanism that should be further strengthened, especially as it is gaining the public's trust, the Commission can only supplement the work of the courts, not replace it.

[15] See Legal Aid Law (No. 27 of 1978).

[16] See articles 17 and 126 of the Constitution.

Victim and witness protection

84. In general, judicial proceedings, in particular criminal proceedings, do not consider the victim. All judicial actors should have the victim in mind in all aspects of their work. The lack of a proper legal framework for victim and witness protection has long been identified as a critical issue in the country and as a factor that has contributed to a high level of impunity.

85. On 7 March 2015, Parliament finally adopted the Assistance to and Protection of Victims of Crime and Witnesses Act (No. 4 of 2015), which had been promised by the new government. The Act, which is based on a bill that was prepared in 2007, has been widely criticized; in particular, serious concerns have been expressed about the independence of its operating body, which is located within the institutional hierarchy of the police despite the fact that security forces have been identified as responsible in a number of serious human rights violations and abuses, including in the majority of torture-related cases (see CAT/C/LKA/CO/5, para. 17). The Government's commitment to reviewing the Act[17] has not yet concretized and the establishment of a victim and witness protection division is going ahead as originally planned.

86. In many cases, victims live in close proximity to their abuser and are therefore particularly vulnerable and afraid. In some regions, especially in the north of the country, the military continues to exercise control over people's lives. If someone reaches out to the local courts or travels to Colombo to file a complaint, the military knows about it. The climate of fear is still palpable. Victim and witness protection will continue to be a determining issue in the context of common crimes, abuses and violations committed by members of the security forces, as well as in the context of transitional justice mechanisms that have been created, such as the Office of Missing Persons, or that will be established, such as a truth-seeking mechanism or specialized court.

Persisting impunity

87. The failure to hold perpetrators accountable for gross human rights violations, serious violations of humanitarian law and international crimes in Sri Lanka has long been documented. Furthermore, while the conflict lasted, there was virtual impunity for any abuse committed by the police or the security forces. Impunity is so widespread that it has become a normal occurrence, thereby contributing to shattering the public's confidence in its judiciary. Since the change of government, some positive steps seem to have been taken, as five new cases were reportedly being investigated at the time of the visit (in all five cases, the military intelligence apparatus was allegedly involved). In a now famous case before the High Court in Jaffna, a military officer was condemned to 25 years in prison for rape. While that case is still an exception, it gives hope that justice can be done.

I. Transitional justice

88. Over the years, Sri Lanka has established a large number of ad hoc commissions to inquire into politically sensitive crimes, shed light on past atrocities and deal with lessons learned. However, these commissions, whose reports have rarely been made public, have not brought the results and changes hoped and have even, by their very existence, jeopardized the development or reinforcement of competent and independent institutions.

89. The authorities should be commended for having committed themselves to embarking on a difficult journey to set up transitional justice mechanisms to deal with its past in a comprehensive way.

90. Transitional justice mechanisms are important for building a sustainable future for the country and all its communities, and for preventing the recurrence of violations. The justice component of the transitional justice process must be independent, impartial, credible and effective. During her visit, the Special Rapporteur observed that many people

[17] See, for example, Human Rights Council resolution 30/1, para. 9.

did not trust that their justice system would deliver justice, not even in non-sensitive cases. The capacity of the police, State counsels and judges to independently and professionally deal with extremely complex cases involving serious violations of international human rights law and international humanitarian law, as well as international crimes, has yet to be built.

91. Attention should be paid simultaneously to transitional justice measures, in particular the special judicial mechanism, and to the objective of strengthening the independence of the country's "regular" justice system. Reforming the administration of justice in the light of international norms and standards regarding its independence, including possible vetting processes of current or future judges, will improve the functioning of the justice system for all and contribute to guaranteeing the non-recurrence of past atrocities.

92. There is, however, a perception that law-making processes lack transparency. Civil society organizations and others have expressed serious concern in relation to deficiencies of good governance in legislative processes. For example, while the legislation to establish the Office of Missing Persons was adopted by Parliament in August 2016, six months later it had not yet been published in the official gazette. Information received suggests that new amendments are being discussed in relation to the already adopted legislation; however, no information has yet been provided publicly on that matter. The Special Rapporteur cautions that when law-making is done through irregular processes, rumours and suspicions flourish, easily feeding into narratives that are counterproductive to democratic reform.

J. Constitutional reform

93. The National State Assembly has launched a process to review the Constitution, which presents an opportunity that should not be missed to confer constitutional status to provisions safeguarding the independence and impartiality of the administration of justice, thereby contributing to reinforcing the independence and impartiality of the justice sector as a whole. It is also important to highlight that, in a transitional justice context, constitutional reform contributes to guaranteeing the non-recurrence of serious human rights violations and other atrocities.

94. The six subcommittees set up by Parliament to look into particular matters issued their reports in November 2016. Overall, the amendments suggested in the report of the Subcommittee on the Judiciary seem positive. The Special Rapporteur welcomes in particular the proposition to establish a constitutional court, since the current constitutional review jurisdiction of the Supreme Court is clearly inadequate. In that context, she calls on the Government to consider introducing an effective individual complaints procedure in relation to human rights violations. Looking ahead, the Special Rapporteur stresses that more efforts are needed to grasp the complexity of the issues at stake and calls for a more comprehensive and detailed review of the Subcommittee's report. At the time of writing, it was unclear what the next steps in the process would be. To give legitimacy to the constitutional reform process, it is essential to keep the public continuously informed about the next steps. Regarding the reforms related to the administration of justice, wide consultations with the legal community should be held, to allow members of that community to make substantive comments.

V. Conclusions

95. **Sri Lanka is at a critical moment in its history. While the armed conflict ended in 2009, after more than 25 years many of the structures of a nation at war remain in place. The fabric of Sri Lankan society was left ravaged and the justice sector still needs to tend to its deepest wounds.**

96. **In general, the administration of justice should be more transparent, decentralized and democratic. The country needs to conduct a strict exercise of introspection, so as to improve the independence, quality and credibility of its judiciary, the Attorney-General's department and the police forces. A significant**

change in the attitude and sensitivity of many members of the legal professions, in particular the judiciary, towards reforms and human rights will be necessary. Guidance on how to go about strengthening the independence, impartiality and competence of those involved in the administration of justice can be found in the present report, but also in an important number of international and regional instruments, including the Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government endorsed in 2003.

97. While the democratic gains of the past two years must be welcomed, it is important to recognize that much more could and should have been done to manifest a commitment to genuine reform, in particular in the justice sector, and to create meaningful and participatory transitional justice mechanisms. More tangible reforms are expected and necessary before the country can be considered to be on a stable and sustainable path towards democracy and to be governed by the rule of law. It is important to accelerate the process of positive change within a comprehensive and inclusive framework, otherwise the momentum for such reform could be lost.

98. Building a justice system that all sectors of society will trust and be able to rely on to defend and enforce their rights will take time. Bold steps need to be taken, as a sign of the authorities' commitment to address the atrocities of the past and, above all, the structures that allowed such atrocities to happen. It is important to remember that justice must not merely be done, but must also be seen to be done.

VI. Recommendations

99. The recommendations below should be read in conjunction with the recommendations contained in the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/34/54/Add.2).

100. Urgent measures should be adopted by the authorities to give effect to all the rights protected in international human rights treaties that have been ratified and are therefore in force. The authorities should also enforce the decisions adopted by the United Nations treaty bodies whose jurisdiction it has voluntarily accepted.

101. The chapter on fundamental rights of the Constitution should be thoroughly reviewed to ensure that civil, cultural, economic, political and social human rights are protected, in line with the international human rights obligations of the State.

102. The Constitution should clearly and expressly recognize the fundamental principle of the separation of powers, establish checks and balances and guarantee the independence of the judiciary and the courts, as well as of the legal profession.

103. The composition of the Constitutional Council should balance the number of active politicians with representation from civil society, the Bar Association and academia so as to avoid the politicization of the appointment processes.

104. The Constitutional Council should set out and publish its rules of procedures, including the criteria used to evaluate candidates' suitability for a given position, which should be scrupulously and consistently applied.

105. The selection and appointment of judges of both superior and first instance courts should be transparent at all stages and follow clear recruitment criteria, including technical requirements. Proper evaluation systems should also be established and published.

106. Serious considerations should be given to broadening the composition of the Judicial Service Commission, in particular by including judges of other courts and tiers and other experts, such as retired judges, lawyers and members of academia.

107. Decisions on promotions should be reached following a fair and transparent evaluation procedure based on objective factors, in particular the merits, integrity, experience and seniority of the candidates; these factors and procedures should be made public.

108. The Judicial Service Commission should review and clarify its policy regarding the transfer of first instance court judges. In particular, it should look into the seriously negative impact that such transfers can have on the timely delivery of justice, and set up and publicize objective criteria, which should take into account the specific expertise of judges.

109. Judges should be remunerated with due regard for the responsibilities, the nature and the dignity of their office; their salary scale should be different from the one used for other public officers.

110. Special measures should be urgently taken to redress the discrepancies in terms of available material resources between the different courts; particular attention should be paid to courts located in the Northern and Eastern Provinces.

111. Any impeachment procedure should be regulated by a law passed by Parliament, which should provide for a judicial determination of the merits of the causes triggering the removal procedure, and the findings of alleged misconduct. Legislation should explicitly stipulate what constitutes misbehaviour, in line with the international standards set out in the Basic Principles on the Independence of the Judiciary and the Bangalore Principles of Judicial Conduct. The final decision should lie in the hands of an independent and impartial panel or appellate tribunal, which should decide on the existence of misbehaviour in the given case. So as to avoid any selectivity in the composition of that panel, it may be decided that, when retiring, judges are automatically enrolled to serve as members of the impeachment panel or appellate tribunal.

112. All disciplinary proceedings should be conducted in a way that respects due process and allows for an independent review of the decisions made. The specific causes triggering misconduct and the corresponding sanctions, which must be proportionate and adequate, as well as the procedures to follow, should be established in law. The creation of a special disciplinary panel, whose independence and impartiality must be ensured, should be seriously considered.

113. A code of conduct for judges, in line with international standards such as the Bangalore Principles of Judicial Conduct, should be adopted in consultation with members of the judiciary; its drafting should be entrusted to an independent panel composed of both retired and sitting judges, lawyers and academic experts.

114. The appointment of the Attorney-General should be clearly set out in law and include objective selection criteria to ensure the transparency of the procedure and the credibility and independence of the office.

115. The process for appointing State counsels should be reviewed to increase its transparency and impartiality and should include objective evaluation criteria.

116. The legality of investigations should be closely monitored through effective judicial oversight.

117. The Attorney-General should issue clear and proper guidelines for the investigation of crimes and the prosecution of perpetrators, including victim-oriented protocols that respect women's and children's rights. Specific guidelines should be developed for the effective investigation of gross violations of international human rights law and serious violations of international humanitarian law and for the prosecution of perpetrators of such crimes.

118. The Attorney-General's department should be supervising the investigation of crimes tried before the high courts.

119. Both police officers and State counsels should be adequately trained to discharge their functions; training sessions should include specialized training in human rights, including on integrating gender perspectives into their work, as well as technical training.

120. **A specific code of conduct for State counsels, in line with international standards such as the Guidelines on the Role of Prosecutors, should be urgently developed.**

121. **Urgent measures should be taken to reduce delays in the investigation of crimes and the indictment of alleged offenders.**

122. **Measures to decentralize the work of the Attorney-General's department should be encouraged and be taken in consultation with all parties involved in criminal prosecutions.**

123. **Serious consideration should be given to reviewing the roles and powers of the Attorney-General with a view to reinforcing the independence of that office and reducing conflicts of interest.**

124. **An independent special office should be established to handle the prosecution of State officials.**

125. **Urgent measures should be taken to allow people from different sectors of society to be part of the justice system and to have access to it; those measures could include the following: reviewing recruitment, selection and appointment procedures, including evaluation criteria; making language requirements mandatory for certain positions; considering language abilities when filling positions in mostly Tamil-speaking areas; identifying barriers preventing minorities from reaching positions in the justice system and devising strategies to overcome them; and ensuring adequate access to secondary and university education.**

126. **Qualified and high-quality interpretation and translation services should be made available in every court and at all stages of judicial proceedings; police forces should also have access to quality interpretation and translation.**

127. **Sri Lanka should set up and implement a plan of action to improve women's representation in all legal professions, ensuring in particular the equal representation of women at all levels of the justice system.**

128. **The independence of lawyers, and the vital role lawyers play in upholding the rule of law and promoting and protecting human rights, should be recognized in law.**

129. **The procedures for the admission, enrolment and discipline of attorneys-at-law should be revised in consultation with lawyers and representatives of the Bar Association, which should oversee the authorization to practise law and the enforcement of disciplinary measures. Any decision should be reviewed by an independent court. Disciplinary proceedings, including disbarment, should provide for all guarantees of fairness and due process, including the right to an independent review.**

130. **Any threats to or attacks against lawyers, or any improper interference in their work, should be promptly investigated and sanctioned. The authorities should also ensure the security of lawyers and their families.**

131. **All those participating in the justice system must be adequately educated and trained. Education and training on human rights should be mandatory. There should also be opportunities for continuing education and on-the-job training.**

132. **Law curricula should include mandatory courses on international human rights law, including gender perspectives and women's rights, international humanitarian law and international criminal law.**

133. **Legislation should be urgently amended to allow every person arrested or detained to have access to a lawyer of his or her choice from the moment of arrest and every person arrested or detained should be immediately informed of that right and of the avenues available in case he or she cannot afford to pay for a lawyer. The right to have access to a lawyer from the moment of arrest should also be enshrined in the Constitution.**

134. The Prevention of Terrorism Act should be immediately repealed; any replacing legislation, if at all necessary, should fully respect international human rights law and standards.

135. The authorities should study the backlog of tribunals and analyse the causes of judicial delays to design a comprehensive plan to improve the efficiency of the administration of justice without encroaching on the interests of justice. The design and implementation of any measures should be done in consultation with all stakeholders, in particular, judges, lawyers and State counsels.

136. The practice of plea bargaining should be clearly regulated in legislation. Defendants should never be pressured into pleading guilty and should be informed in a language they understand of all the consequences and implications of pleading guilty.

137. Legislation should be enacted to define a clear and precise scope and application for the offence of contempt of court, identifying behaviours constituting contempt of court and setting up a procedure to deal with such cases.

138. The Supreme Court should also sit in other parts of the country, including in the Northern and Eastern Provinces, to facilitate access to justice and raise the awareness of judges to the specific situation of people in regions outside of the capital, and contribute to building trust in the justice system.

139. The authorities must adopt special measures to ensure that persons in particularly vulnerable situations, such as children, people living in remote areas and victims of sexual violence, have meaningful access to the justice system and other complaint procedures; such measures include the provision of qualified legal aid.

140. The work of the Legal Aid Commission should be duly acknowledged and supported, including through the allocation of additional resources.

141. The high courts should be entrusted with the power to receive applications related to violations of fundamental rights; the time limit to file an application should be extended and an appeal procedure set up.

142. The Human Rights Commission must be supported at the highest levels and receive additional human and financial resources in order to strengthen and expand its activities, reform its methods of work and adequately train its staff.

143. The victim and witness protection mechanism should be urgently reviewed and its independence strengthened so as to provide meaningful protection.

144. Comprehensive measures should be urgently adopted to address impunity. Those measures should not be limited to the transitional justice context but should be aimed at the whole justice chain.

145. The authorities should take concrete measures to implement Human Rights Council resolution 30/1 and the recommendations contained in the report of the Office of the United Nations High Commissioner for Human Rights on its investigation on Sri Lanka, in particular those related to fighting impunity and ratifying the Rome Statute of the International Criminal Court.

146. The independence, impartiality, competence and credibility of the special judicial mechanism envisaged as part of the different transitional justice measures, including the prosecution and investigation sides of the mechanism, should be ensured.

147. The constitutional reform process should be continued in a transparent manner; relevant stakeholders should remain involved and the public should be kept informed at all stages.